

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Inessa Abayev	Team: Team # 8	CCRB Case #: 200916245	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/05/2009 10:30 PM	Location of Incident: § 87(2)(b)	Precinct: 07	18 Mo. SOL 4/5/2011	EO SOL 4/5/2011	
Date/Time CV Reported Fri, 10/16/2009 12:15 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Fri, 10/16/2009 12:15 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Lynaugh	20349	945231	007 PCT
2. SGT Mark Vazquez	02696	933447	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Patrick Lynaugh	Force: PO Patrick Lynaugh used physical force against § 87(2)(b)	§ 87(2)(b)
B.SGT Mark Vazquez	Abuse: Sgt. Mark Vazquez threatened § 87(2)(b) with the use of force.	§ 87(2)(b)

### Case Summary

§ 87(2)(b) mailed the CCRB a written statement about this complaint on October 13, 2009 (encl. 4a-4d). The CCRB received his complaint on October 16, 2009.

At about 10:30 p.m. on October 5, 2009, § 87(2)(b) a homeless individual, was sleeping outside of a church building on § 87(2)(b) in Manhattan. PO Patrick Lynaugh and Sergeant Mark Vazquez of the 7<sup>th</sup> Precinct approached § 87(2)(b) to awake him. The following allegations resulted from their interaction:

- **Allegation A- Physical Force:** PO Lynaugh used physical force against § 87(2)(b) § 87(2)(g).  
§ 87(2)(b).
- **Allegation B- Abuse of Authority:** Sgt. Vazquez threatened § 87(2)(b) with the use of force.  
§ 87(2)(g).  
§ 87(2)(b).

### Results of Investigation

#### Civilian Statements

##### Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) black male with black hair and brown eyes. He is 5'7" tall and weighs 150 pounds.
- § 87(2)(b) provided a typed initial statement on (encl. 4a-4d), a phone statement on October 26, 2009 (encl. 6) and an official statement on October 29, 2009 (encl. 7a-7d). § 87(2)(g)

#### CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on October 29, 2009.

At about 10:30 p.m. on October 5, 2009, § 87(2)(b) was sleeping in a cupboard to the side of his church's entrance when he was awoken by a forceful kick to his back (**Allegation A**). § 87(2)(b) turned around to find PO Patrick Lynaugh standing about three feet away from his back. A fellow church member, § 87(2)(b) was watching the incident from near the bottom of the church stairs. PO Lynaugh stated that § 87(2)(b) had to "get up and move" and that he couldn't sleep there. § 87(2)(b) explained that he had permission from the pastor, Reverend § 87(2)(b) to sleep outside of the church. PO Lynaugh again ordered § 87(2)(b) to pack up his things and leave. As § 87(2)(b) began packing up his belongings, PO Lynaugh returned to his patrol car. Sgt. Mark Vazquez was sitting in the vehicle. § 87(2)(b) began packing his belongings when the officers drove away. § 87(2)(b) then sat down on the church steps and waited for his friend to come outside. § 87(2)(b) asked § 87(2)(b) if he saw PO Lynaugh kick him. § 87(2)(b) responded that he indeed witnessed the kick and thought that it was wrong.

The officers returned about ten minutes later. Sgt. Vazquez asked § 87(2)(b) why he was still there. He replied that he was waiting for someone inside of the church. As the officers approached him, § 87(2)(b) noticed that Sergeant Vazquez held a taser device in his hand. Sgt. Vazquez again asked why § 87(2)(b) was still there. § 87(2)(b) repeated that he was waiting for someone to come out of the church. PO Lynaugh told § 87(2)(b) that officers have the right to remove any individual off of the steps of city property according to the Police Commissioner, and stated that § 87(2)(b) could not remain on the steps.

§ 87(2)(b) then asked why Sergeant Vazquez permitted PO Lynaugh to kick him. He responded that PO Lynaugh did not kick § 87(2)(b) but had “nudged.” However, § 87(2)(b) told the officers that he had a witness who saw PO Lynaugh kick him. The officers refuted the claim. § 87(2)(b) then came outside and affirmed that the officer kicked § 87(2)(b). Sergeant Vazquez then pointed the taser gun five to eight feet away from § 87(2)(b) who was still sitting on the church steps, stating that he was under arrest for Disorderly Conduct (**Allegation B**). Sgt. Vazquez pointed the taser gun at § 87(2)(b)’s face for about thirty seconds. § 87(2)(b) replied, “I didn’t do anything wrong and I’m not afraid of that taser gun.”

Sgt. Vazquez instructed § 87(2)(b) to “get up and show [him his] ID.” § 87(2)(b) stood up and took out his identification as Pastor § 87(2)(b). § 87(2)(b) came outside and introduced himself to the officers. Sgt. Vazquez did not take § 87(2)(b)’s identification. Pastor § 87(2)(b) told the officers that he knew § 87(2)(b) and that he had given him permission to sleep there. Sgt. Vazquez then placed the taser device into the back pocket of his gun belt. § 87(2)(b) observed the officers speak to Pastor § 87(2)(b) before returning to their patrol car and driving away. Pastor § 87(2)(b) advised § 87(2)(b) to leave for the night, and told him that he would visit the Precinct. § 87(2)(b) walked to a nearby train station where he slept for the rest of the evening.

**Witness: PASTOR § 87(2)(b)**

- Pastor § 87(2)(b) is a § 87(2)(b) male with brown hair and brown eyes. He is 5’8” tall. Pastor § 87(2)(b) serves as the § 87(2)(b) of § 87(2)(b) in Manhattan. He provided a phone statement on November 18, 2009 (encl. 9) and an official statement at the CCRB on December 2, 2009 (encl. 10a-10d).

At approximately 10:30 p.m., Pastor § 87(2)(b) was getting ready to leave the church when two church members, § 87(2)(b) and likely a female named “§ 87(2)(b)” entered his office to inform him that § 87(2)(b) was being arrested by officers outside of the building. Pastor § 87(2)(b) had granted § 87(2)(b) permission to sleep outside, on church property, in a location that is not on the sidewalk. Pastor § 87(2)(b) went outside where he observed § 87(2)(b) sitting on the steps of the Church, with his possessions. Two officers, PO Lynaugh and Sgt. Vazquez, were standing two feet directly in front of § 87(2)(b) and two more officers, PO3 and PO4 were standing by their patrol car, which was double-parked in front of the church. PO Lynaugh and Sgt. Vazquez were eye-level with § 87(2)(b). It was dark outside, and he therefore could not further describe PO Lynaugh and Sgt. Vazquez. Pastor § 87(2)(b) identified himself to PO Lynaugh. A crowd was gathering by the further right exit of the church building

§ 87(2)(b) told Pastor § 87(2)(b) that the officers had kicked him in the back. Pastor § 87(2)(b) asked, “Why did they kick you in the back?” Pastor § 87(2)(b) told the officers that § 87(2)(b) had his permission to sleep there, to which one of the officers replied, “It doesn’t matter” and repeated that § 87(2)(b) had to leave. Pastor § 87(2)(b) then asked if someone had complained about § 87(2)(b). He added that § 87(2)(b) was sleeping on the church property line. PO Lynaugh replied, “We don’t need a complaint to have him removed.” PO Lynaugh kept his hands to his side, while Sgt. Vazquez kept his right hand towards his back as though he was holding something. Pastor § 87(2)(b) could not tell what object he might have been holding because it was out of his view. The officers waited while § 87(2)(b) looked through his wallet for his identification. Pastor § 87(2)(b) noted that § 87(2)(b) was nervous, thus preventing him from locating his ID quicker.

§ 87(2)(b) said, “They kicked me, they kicked me. It’s not fair,” to which Sgt. Vazquez responded something to the effect of, “We don’t know if they have a knife or something. We have to make sure we arouse them up quickly.” The officers looked as though they were about to arrest § 87(2)(b).

PO Lynaugh said he had orders to have all homeless people removed as they could not sleep in front of buildings, and mentioned Commissioner Kelly's name.

Pastor § 87(2)(b) stated that he would take care of the situation, after which point the officers decided to leave. § 87(2)(b) complained of a lot of pain in his back, but said that he didn't want to go to a hospital. Pastor § 87(2)(b) heard § 87(2)(b) state at least six times that an officer kicked him.

### **Attempts to Contact Civilians**

§ 87(2)(b) Both § 87(2)(b) and Pastor § 87(2)(b) identified § 87(2)(b) as a witness to this incident. The investigation mailed § 87(2)(b) two "please call" letters on January 6, 2010, and March 11, 2010. The investigator also called § 87(2)(b)'s home telephone, which was located through a Verizon subpoena. § 87(2)(b)'s mother answered the first call and took a message because he was away in college in Boston. During the second call, § 87(2)(b)'s mother confirmed that she gave her son the message but he did not remember the incident. She did not wish to provide her son's cell phone number during either conversation. The investigation was therefore unable to obtain a statement from § 87(2)(b).

### **NYPD Statements:**

#### **Subject Officer: PO PATRICK LYNAUGH**

- *PO Patrick Lynaugh is a § 87(2)(b)-old white male with brown hair and blue eyes. He is 5'9" tall and weighs 165 pounds.*
- On October 5, 2009, PO Lynaugh worked from 3:00 p.m. to 11:35 p.m. as the sergeant's operator for Sgt. Mark Vazquez. They were assigned to marked RMP 4814. PO Lynaugh and Sgt. Vazquez were in uniform.

### **Memobook**

PO Lynaugh did not have memobook entries relating to this incident (encl. 11a-11c).

### **CCRB Testimony**

PO Patrick Lynaugh was interviewed at the CCRB on April 6, 2010 (encl. 12a-12c).

On October 5, 2009 at approximately 10:30 p.m. PO Lynaugh and Sgt. Vazquez were driving down East Broadway. The officers observed a homeless man, § 87(2)(b) sleeping at the top of a set of steps in front of a building. He was wrapped in blankets. Sgt. Vazquez decided to approach § 87(2)(b). Both Sgt. Vazquez and PO Lynaugh then exited their vehicle and approached § 87(2)(b). PO Lynaugh nudged § 87(2)(b)'s foot twice to awaken him. PO Lynaugh twice stated, "Sir, you have to wake up."

§ 87(2)(b) awoke "disgruntled" and sat up. § 87(2)(b) was very loud. He stood up and yelled, "Do not touch me." § 87(2)(b) began shaking his body and throwing things. PO Lynaugh believed § 87(2)(b) was intoxicated because he was mumbling to himself and being loud. However, PO Lynaugh did not smell alcohol on § 87(2)(b). PO Lynaugh and Sgt. Vazquez told § 87(2)(b) that he should go to a homeless shelter because he was not allowed to sleep on the street and it was cold outside.

Sgt. Vazquez told § 87(2)(b) the names and locations of two homeless shelters. § 87(2)(b) did not want to listen or move. The officers told § 87(2)(b) they would leave and give him five minutes to collect his things before they returned to make sure he was on his way to a homeless shelter. § 87(2)(b)

said PO Lynaugh had kicked him. Sgt. Vazquez said, “PO Lynaugh did not kick you. Do you have any injuries? Do you need me to call an ambulance?” § 87(2)(b) refused medical attention.

The officers returned to their vehicle, and returned to the location five minutes later. The officers observed § 87(2)(b) standing at the top of the steps by his belongings, which he had not moved. Both officers exited their vehicle and approached § 87(2)(b) again. They remained at the bottom of the steps. § 87(2)(b) was acting disorderly, and was screaming and yelling. § 87(2)(b) walked down the steps and approached the officers. He was about an arms-length away from Sgt. Vazquez. § 87(2)(b) said that he had permission to sleep on the steps. The officers told § 87(2)(b) that they had not been informed that he was allowed to sleep on the steps and that he must go to a shelter.

During this time, Sgt. Vazquez had a taser in his hand, which he was holding because he did not have a holster. He did not have the taser in his hand during the first interaction. PO Lynaugh did not know where Sgt. Vazquez’s taser was during their first interaction with § 87(2)(b). Sgt. Vazquez asked § 87(2)(b) for identification. § 87(2)(b) replied that he did not have any identification.

Pastor § 87(2)(b) and his two children emerged from the building, which the officers then learned was a church. Pastor § 87(2)(b) said that § 87(2)(b) was a friend, and that he had permission to sleep in front of the building. Sgt. Vazquez informed Pastor § 87(2)(b) that § 87(2)(b) was not allowed to stay on the steps and told § 87(2)(b) he should still go to a homeless shelter. They then left the location.

PO Lynaugh did not kick § 87(2)(b). Sgt. Vazquez did not point the taser at § 87(2)(b). Sgt. Vazquez did not tell § 87(2)(b) that he was under arrest. Sgt. Vazquez told § 87(2)(b) that he could be arrested if he approached the officers and touched them for failure to obey a lawful order or disorderly conduct.

**Subject Officer: SERGEANT MARK VAZQUEZ**

- Sgt. Mark Vazquez is a § 87(2)(b)-old Hispanic male with brown hair and brown eyes. He is 5’11” tall and weighs 185 pounds.
- On October 5, 2009, Sgt. Vazquez worked from 2:50pm to 11:47pm. He was assigned to Patrol Supervisor and worked with PO Lynaugh. PO Lynaugh and Sgt. Vazquez were in uniform and drove RMP 4818.

**Memobook**

Sgt. Vasquez did not have any memobook entries relating to this incident (encl. 13a-13b).

**CCRB Testimony**

Sgt. Vazquez was interviewed at the CCRB on March 26, 2010 (encl. 14a-14c).

At approximately 10:30 p.m. on October 5, 2009, PO Lynaugh and Sgt. Vazquez were driving up East Broadway when they observed § 87(2)(b) sleeping above a set of steps in front of a building. PO Lynaugh and Sgt. Vazquez exited their car to make sure § 87(2)(b) was alright because it was a cold evening, and to urge him to go to a shelter. PO Lynaugh nudged § 87(2)(b)’s foot continuously with his foot in a very light manner to awaken him. § 87(2)(b) was “irate” when he woke up, and smelled of alcohol. Sgt. Vazquez asked § 87(2)(b) if he had been drinking. § 87(2)(b) replied that he had not been. § 87(2)(b) stood up and began yelling and cursing, and repeatedly used the word “fuck.”

§ 87(2)(b) stated that PO Lynaugh had kicked him. Sgt. Vazquez said, “My officer didn’t kick you. He just tried to wake you up.” § 87(2)(b) said, “Well, I don’t think its right that he kicked me.” Sgt.

Vazquez asked § 87(2)(b) if he had any injuries or if he needed an ambulance. § 87(2)(b) refused medical attention.

Sgt. Vazquez told § 87(2)(b) that there is a mandate by Police Commissioner Kelly that homeless people cannot sleep outside of buildings. The mandate stated that homeless people should not sleep outside in public places during the winter months. § 87(2)(b) said that he had permission to sleep on the steps and that he did not have to leave. Sgt. Vazquez asked if the person who had given him permission was around. § 87(2)(b) said, “No.” Sgt. Vazquez told § 87(2)(b) that in that case, he had to pick up his belongings for the moment and find a way to shelter. Sgt. Vazquez and PO Lynaugh returned to their vehicle and left.

Upon returning to the location, Sgt. Vazquez observed § 87(2)(b) sitting at the top of the steps with his belongings still spread out. He was picking up his belongings very slowly, which included a sleeping bag and a cart. Sgt. Vazquez and PO Lynaugh again approached § 87(2)(b). Sgt. Vazquez stated, “Sir, I thought we had an understanding.” § 87(2)(b) said, “I don’t have to fucking leave.” § 87(2)(b) stood up and approached until he was less than two feet away from Sgt. Vazquez’s face. Sgt. Vazquez put his right hand up to stop § 87(2)(b).

Sgt. Vazquez had carried his taser in his left hand during both incidents. He pointed the taser downward and was holding it in his hand because he did not have a holster. § 87(2)(b) asked, “Are you going to zap me with that thing?” Sgt. Vazquez said, “No, it is just a tool that I carry, but you really need to calm down.” Sgt. Vazquez asked § 87(2)(b) for identification in order to possibly issue him a summons. However, § 87(2)(b) refused to provide any identification. § 87(2)(b) could have been arrested for disorderly conduct because his cursing caused a crowd to gather.

A male, § 87(2)(b) then exited the building. Sgt. Vazquez said, “Did you see my officer kick him?” He replied, “Yes, I did.” The pastor also came outside. Sgt. Vazquez explained to them that § 87(2)(b) could not sleep outside. The pastor said that he allowed § 87(2)(b) to stay in front of the church and that § 87(2)(b) usually sleeps there once in a while. Sgt. Vazquez advised the pastor to notify the precinct that he allows § 87(2)(b) to stay in front of the church. The officers then left the location.

Sgt. Vazquez did not see PO Lynaugh kick § 87(2)(b). Sgt. Vazquez did not point his taser device at § 87(2)(b)’s face during either interaction.

#### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim (encl. 23a-23b) with the City of New York as of May 11, 2010, with regard to the incident.

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **Civilian(s) CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2).

### **Subject Officer(s) CCRB History**

- PO Patrick Lynaugh has been a member of the service for two years and there are no substantiated CCRB allegations against him (encl. 1a).
- Sergeant Mark Vazquez has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 1b).

### **Conclusion**

#### **Identification of Subject Officers**

Sgt. Vazquez and PO Lynaugh verbally identified themselves to § 87(2)(b) upon request. Roll Call and the officers' memobooks show that Sgt. Vazquez and PO Lynaugh were both on duty during the incident time and date. PO Lynaugh acknowledged that he made physical contact with § 87(2)(b) to awaken him. § 87(2)(g). Sgt. Vazquez confirmed that he had his taser device present during this interaction. § 87(2)(g).

#### **Allegation Not Pleaded**

**Threat of Arrest:** Sgt. Vazquez threatened to arrest § 87(2)(b) alleged that Sgt. Vazquez told him he was under arrest before requesting his identification. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

#### **Investigative Findings and Recommendations**

##### **Allegation A: Force- PO Patrick Lynaugh used physical force against § 87(2)(b)**

§ 87(2)(b) consistently alleged that PO Lynaugh forcibly kicked him in the back while he was asleep outside of a church. He questioned the officers about the kick, and complained of the kick to Pastor § 87(2)(b) in the officers presence.

Both PO Lynaugh and Sgt. Vazquez both stated that PO Lynaugh used his foot to nudge § 87(2)(b) s foot until he woke up. PO Lynaugh stated that this was only done after he unsuccessfully attempted to wake § 87(2)(b) up from his sleep with loud verbal commands. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

By all accounts, § 87(2)(b) was present for the first and second interaction between § 87(2)(b) and the officers. § 87(2)(b) stated that he pointed out to the officers that § 87(2)(b) witnessed PO Lynaugh kick him. The officers were incredulous until § 87(2)(b) corroborated the allegation in their presence. While PO Lynaugh did not reference § 87(2)(b) s statements in his statement, Sgt. Vazquez testified that § 87(2)(b) indeed told the officers that he saw PO Lynaugh kick § 87(2)(b). Unfortunately, the investigation was unable to obtain a statement from § 87(2)(b) the sole witness to the alleged kick.

§ 87(2)(g)

§ 87(2)(b) Pastor § 87(2)(b) is familiar with § 87(2)(b) through the church, and is also involved in police and community relations. According to Pastor § 87(2)(b) § 87(2)(b) was seated on the church steps when he came outside. The officers, in contrast, stood in front of him and appeared as though they were "ready to grab him." Furthermore, Pastor § 87(2)(b) testified that § 87(2)(b) was looking through his wallet for his ID. He believed that the search took longer than expected because § 87(2)(b)

was nervous. § 87(2)(g)

§ 87(2)(g)

**Allegation B: Threat of Force: Sergeant Mark Vazquez threatened § 87(2)(b) with the use of force.**

It is undisputed that Sgt. Vazquez held his taser device in his hand during the second visit to § 87(2)(b)'s location. § 87(2)(g) According to § 87(2)(b) Sgt. Vazquez pointed the taser device at him after he told the officers that another individual witnessed PO Lynaugh kick him. Sgt. Vazquez continued to point his taser device at § 87(2)(b) for about thirty seconds, all while § 87(2)(b) remained seated on the church steps. Pastor § 87(2)(b) then emerged from the church and identified himself, and Sgt. Vazquez placed the taser device in his back pocket.

Sgt. Vazquez stated that he held his taser device in his left hand during both interactions with § 87(2)(b). He was forced to hold the taser device because its holster was broken. PO Lynaugh also stated that Sgt. Vazquez's holster was broken on the incident date. More specifically, PO Lynaugh did not know where Sgt. Vazquez's taser device was during the first interaction but corroborated that Sgt. Vazquez held it in his hand during their second interaction with § 87(2)(b). Both officers denied that Sgt. Vazquez ever pointed his taser at § 87(2)(b) or threatened him with it.

Pastor § 87(2)(b) did not see a taser device in Sgt. Vazquez's hand, but stated that Sgt. Vazquez kept his hand over his back pocket for the duration for his interaction with § 87(2)(b). This piece of testimony supports § 87(2)(b)'s claim that Sgt. Vazquez put the taser device in his back pocket after Pastor § 87(2)(b) came outside. § 87(2)(g)

§ 87(2)(g)

Team: 8

Investigator: \_\_\_\_\_  
Signature Inessa Abayev  
Print May 19, 2010  
Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date



Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date